

Ofgem draft Forward Work Programme 2019-2021 Energy UK Response

15 February 2019

Introduction

Energy UK is the trade association for the GB energy industry with a membership of over 100 suppliers, generators, and stakeholders with a business interest in the production and supply of electricity and gas for domestic and business consumers. Our membership covers over 90% of both UK power generation and the energy supply market for UK homes. We represent the diverse nature of the UK's energy industry – from established FTSE 100 companies right through to new, growing suppliers and generators, which now make up over half of our membership.

Our members turn renewable energy sources as well as nuclear, gas and coal into electricity for over 27 million homes and every business in Britain. Over 680,000 people in every corner of the country rely on the sector for their jobs, with many of our members providing long-term employment as well as quality apprenticeships and training for those starting their careers. The energy industry invests over £12.5bn annually, delivers around £84bn in economic activity through its supply chain and interaction with other sectors, and pays £6bn in tax to HMT.

This is a high-level industry view; Energy UK's members may hold different views on particular aspects of the consultation. We would be happy to discuss any of the points made in further detail with Ofgem or any other interested party if this is considered to be beneficial.

Executive summary

Energy UK welcomes the opportunity to respond to Ofgem's Forward Work Programme (FWP) and commends Ofgem's open engagement and transparency over upcoming work. To keep our response as concise and useful as possible Energy UK's comments are made by exception.

Energy UK asks Ofgem to be explicit about how it has taken stakeholder responses into account when it publishes its final FWP. Periodic updates on Ofgem's progress against the actions set out in the FWP would be useful to stakeholders.

Energy UK urges Ofgem to continue to ensure it takes as open and collaborative approach to regulation as possible. It is vitally important Ofgem, industry and stakeholders work closely together when developing policy to protect consumers and promote a competitive market. In line with the principles of Better Regulation, forward planning and transparency support a consistent and proportionate regulatory approach.

Cumulative Impact and Industry Plan

Energy UK has an overarching concern regarding the quantity of change that Ofgem is pursuing and the cumulative impact that these are having on suppliers' finite resources, both financial and personnel.

Whether it is requiring engagement with long-term programmes, such as faster switching or half-hourly settlement, or ad-hoc projects such as Midata, Ofgem must better co-ordinate their activities. One possible solution would be to create an industry plan that Ofgem should ensure is taken into consideration when deciding upon project timelines and resource requirements. An industry plan from Ofgem would be a useful tool to ensure that this activity is coordinated and can be adequately resourced. This is also particularly enhanced by the resource restraints currently placed upon the market by the price cap. Ofgem has still yet to give any indication on the form or timing of its review into the Secure and Promote Licence Condition. We believe Ofgem should give greater clarity on its plans.

Data Privacy

Regarding data privacy, suppliers are seeing more RFIs coming in that ask for customers' personal data. While suppliers are keen to work with and share data with Ofgem where necessary, protecting their customer data remains their key priority. As such, Ofgem should ensure that it provides clarity as to the reason behind any RFI, especially when dealing with customers' personal data.

Furthermore, Energy UK would urge Ofgem to undertake and publish their DPIAs for each trial/exercise that requires personal data and make clear the lawful basis for each request. It would also be very helpful if Ofgem sought ICO's advice before embarking on each new trial (and published it) in order to avoid suppliers having to navigate competing regulators.

Making retail markets work for all

A. Improve current licensing arrangements to protect consumers while ensuring proportionate regulatory burdens

Energy UK shares Ofgem's aspiration of improving customer satisfaction and value for money for consumers. During the past six months, we have worked in partnership with key stakeholders across the sector in order to evaluate the effectiveness of the current customer complaint journey. There has been widespread agreement that there is a strong evidence base indicating that the current customer journey through the complaints process is a barrier to customer satisfaction.

Energy UK is committed to continuing to lead engagement across the sector in order to identify opportunities for improving the customer journey through the complaints process. In response to feedback from BEIS and Ofgem regarding how to achieve this outcome, we will propose practical solutions to some of the issues that have been identified, including how the Complaints Handling Standards could be reformed in order to drive improved customer satisfaction. Energy UK and key stakeholders across the sector are committed to investing the time and resource to deliver these changes, and we would welcome Ofgem including its own commitment to this work in its forward work programme.

Supplier Licensing Review

Energy UK very much welcomes this review of supplier licensing. The importance of this workstream has been unfortunately highlighted in the recent months with the growing frequency and size of market exits and Supplier of Last Resort (SoLR) events which have placed additional costs onto customers and market participants.

Alongside stricter market entry requirements which Ofgem has already begun consulting on, Energy UK also welcomes Ofgem's plans for ongoing requirements and market monitoring. Due to the growing frequency of SoLR events and the cumulative financial burden upon suppliers and their customers through mutualisation, Ofgem should ensure that this workstream remains a priority as it is consumers who are directly impacted via the smeared costs of failing suppliers. While there have been a number of estimates for the total of these costs, there is no doubt it is a substantial amount. We would, therefore, welcome Ofgem's reassessment of the indicative timelines for this workstream that currently hold mid-2020 as the end date, which may be too far ahead to provide the best protection to consumers.

In response to Ofgem's recent Supplier Licensing Review consultation, Energy UK considered that any new ongoing reporting requirements should need a reason, and suppliers should not be required to

undertake the burden of providing regular reports that are not being utilised by the regulator. As part of its Supplier Licensing Review, Energy UK believes that Ofgem should examine how its reporting requirements are currently used in order to ensure that they remain fit for purpose for the changing market, and to avoid any unnecessary duplication and consequential administrative burdens if Ofgem decides to introduce further requirements.

Strategic review of the microbusiness market

Energy UK welcomes the review, and would encourage that it is evidence-based and undertaken without any pre-conceived outcome in mind. Importantly, the role of TPIs/brokers in the non-domestic sector should be a key part of the review, with potential regulatory change such as direct regulation to address any identified consumer harm from their practices being assessed and actioned as necessary.

B. Understand where consumers' needs are not being met and develop effective policy solutions to address them

Midata in the energy sector

Energy UK welcomes the publication of Ofgem and BEIS's response to their earlier consultation on the Strawman Design document. In response to calls by Energy UK and wider industry, the response confirmed that the Government would be undertaking a policy consultation in spring 2019 and set out the data items that would be in scope for the initial Midata go-live in September 2019. Energy UK members continue to, however, hold significant concerns about the proposed timetables for delivery, especially given the volume of concurrent change through 2019. Energy UK believes that the development and implementation timescales are overly ambitious, unrealistic and require immediate reassessment. Ofgem should ensure that sufficient time is given to the development and implementation process to mitigate unintended consequences and unnecessary costs for customers. In particular, it should be accepted and factored-in to the timeline that the design and implementation of new supplier systems cannot be expected to start until the solution design is locked-down.

Enabling future markets and system arrangements

B. Working with innovators and stakeholders to develop sustainable energy solutions and systems for future consumers

Joint review of codes and code governance

Energy UK welcomes this review. Timescales can be challenging when so many other programmes of work are progressing in parallel. Energy UK is concerned such challenges may limit industry engagement and urges Ofgem to ensure that the timeframe is conducive to facilitating effective contributions from industry.

Review of future retail market design

Energy UK welcomes Ofgem assessing the future of supply market arrangements. Through our Future of Energy report, which is due for publication in 2019, we have highlighted the need for the successes of the current market arrangements to be recognised and any potential reforms to be proportionate and their impacts on the whole energy system to be fully assessed.

Importantly, the review of future supply market arrangements should incorporate, and in no way undermine, the decisions and actions taken as a result of Ofgem's Supplier Licensing Review to ensure stricter market entry and ongoing requirements for market participants.

Energy UK finds it disappointing that the forward work programme does not include plans to further progress towards a more principles-based approach to regulating suppliers and to build upon Ofgem's recent decision on supplier-customer communications. The overly prescriptive nature of the licensing regime was highlighted by many respondents to Ofgem's future supply market arrangements call for evidence, and actions taken through its Future Retail Regulation project have received support from a wide range of stakeholders. Energy UK, therefore, urges Ofgem to ensure that principles-based

regulation is a key consideration of its review of the future retail market design. However, we note that the indicative timeline for the review has a March 2020 end date. Energy UK would welcome the opportunity to work collaboratively with Ofgem to identify any areas of the licence where there would be a strong customer benefit from moving towards a more principles-based approach on a shorter timeline than that for the whole review.

Ofgem should ensure that through this workstream it appropriately addresses the evolving means by which consumers engage with their energy. As a particular example, Energy UK believes that the risks posed to consumers by auto-switching services could be higher than traditional price comparison websites (PCWs). With traditional PCWs, the consumer reviews the options and makes the decision, whereas the consumer delegates this agency to auto-switching services. We encourage Ofgem to review the behaviour of auto-switching services to ensure that the service they provide is transparent to customers. Ofgem should seek to assess the need for regulatory oversight of their activities, in particular in relation to protections for customers in vulnerable circumstances.

Decarbonising energy

Ensuring appropriate regulatory responses to challenges of decarbonising heat and transport will be increasingly important as the uptake of low carbon heat and transport increases in coming years.

Energy UK is working alongside Genserv to examine the development of an Electric Vehicle Governance Framework that may mitigate the need for Ofgem regulation by prioritising industry-led standards and best practice. We will continue to include Ofgem in the consultative process and any further steps from the process.

Regarding the regulation of heat networks, it is appropriate that consumer protection and technical standards be applied for heat networks, particularly given the potential for these to facilitate further, faster and lower cost decarbonisation of heat at scale. These standards should, where possible, be industry-led and reflective of existing standards across other sections of the energy industry.

C. Developing improved network access, charging system operation and wholesale market arrangements to enable efficient future energy markets

Gas charging review

Energy UK welcomes the commitment to work with the industry. The timescale is challenging and Ofgem's full engagement in workgroup meetings will be helpful, as will an indication of Ofgem's timetable for developing its impact assessment and ACER consultation. The impact on customers needs to be fully considered and well-articulated as part of this process, and sufficient lead time provided to reflect the charges in customer tariffs and contracts.

System operation reforms

Energy UK welcomes the commitment to system operation reforms and evaluation of the activities and arrangements of system operators, including the decision to 'actively evaluate and provide views on developments at distribution level'.

It is expected that changes to network licencing will be required, and it may be the case that an entirely new licence is necessary, to define appropriate activities for system operation at distribution level. Changes or additions to licencing should pull from the existing ESO (Electricity System Operator) licence to ensure continuity across the system.

As set out in a recent letter to Jonathan Brearley, Energy UK believes that Ofgem should consult on the appropriate separation of regulated monopolies from commercial activities, as well as on the appropriate level of separation between DNO (Distribution Network Operator) and DSO (Distribution System Operator) bodies and operations. In order to minimise the number of stranded, consumer-funded assets and cost of transition across the UK, new licencing arrangements should be consulted upon and implemented in a timely manner.

D. System stability and security – Working with key partners to develop and influence effective policy solutions to provide a stable energy market

EU exit implementation

Ofgem will have to oversee the process by which both licences and codes are modified to make them 'work' (legally) when the UK leaves the EU. Energy UK notes that the timescales are now very tight for this work. A practical action should involve Ofgem seeking to issue a regular update (open letter or similar) which tracks the necessary Brexit-related code/licence changes and keeps the whole industry abreast of progress.

Network preparedness and arrangements

Ensuring effective licensing and market arrangements

Energy UK encourages Ofgem to give more detail on the gas methodologies to which it refers, in order to ensure that all stakeholders have a clear understanding of what is included in this aspect of the FWP.

Excellence in statutory and core functions

B. Proactive market monitoring and consumer protection

Price cap compliance monitoring

There is limited reference to the default tariff cap beyond monitoring compliance. On Ofgem's monitoring activities, Energy UK believes that detailed and transparent monitoring about the impact of the cap is required, to help inform stakeholders and potentially bring to light any unintended consequences. Energy UK considers that Ofgem's work to assess what the identifying conditions are for effective competition should be a priority throughout 2019. We note that Ofgem has already recognised that conditions for effective competition does not mean outcomes and we look forward to engaging with Ofgem's consultation on this matter.

In addition, Ofgem is already committed to a review of the smart meter allowance within the default price cap in time for the cap period commencing in October. This necessitates, amongst other things early action to establish a clear process and timetable, publication of the Smart Metering Net Costs Change (SMNCC) model and close working with BEIS to gather the best available evidence. Maximising transparency and availability of non-confidential material early in the process will facilitate simpler, fit-for-purpose confidentiality ring arrangements to support necessary scrutiny by stakeholders to inform consultation responses later in the process.

More widely, Energy UK would urge Ofgem to assess the impact of the mutualisation of costs under the default tariff cap, such as Renewables Obligation and Feed-in-Tariff. As noted above, the retail energy market is seeing a growing frequency of supplier failures and it would be detrimental to consumers if the treatment of mutualised costs under the tariff cap were to precipitate further failures.

As noted by the CMA in its recent decision to review the Energy Market Investigation (Prepayment Charge Restriction) Order 2016, there may be unintended consequences for competition, consumers and the rollout of smart meters arising from the interaction of two price caps with misaligned underlying methodologies. In our response to the CMA, Energy UK argued that Ofgem and the CMA should work collaboratively to realign the methodologies, whether by re-baselining the PPM Cap using Ofgem's recent bottom-up assessment methodology, or revoking the Order to allow PPM customers to fall under

the default tariff cap.¹ Energy UK would urge Ofgem to consider this matter as a priority and work with the CMA to address this issue in time for changes to be made ahead of the October price cap period.

For further information or to discuss our response in more detail please contact Candice Orr at candice.orr@energy-uk.org.uk or 020 7747 2964.

¹ [Energy UK response to the CMA's invitation to comment on its proposed review of the Energy Market Investigation \(Prepayment Charges Restriction\) Order 2016](#), 18 January 2019